

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0284-09
Bill No.: Truly Agreed To and Finally Passed SS for SCS for HCS for HB 215
Subject: Attorneys; Office of Administration; Crimes and Punishment; Criminal Procedure
Type: Original
Date: June 6, 2013

Bill Summary: This proposal revises various laws relating to criminal procedure.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
General Revenue	(Unknown - could exceed \$100,000)	(Unknown - could exceed \$100,000)	(Unknown - could exceed \$100,000)
Total Estimated Net Effect on General Revenue	(Unknown - could exceed \$100,000)	(Unknown - could exceed \$100,000)	(Unknown - could exceed \$100,000)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 9 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Total Estimated Net Effect on FTE	0	0	0

☐ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☒ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Local Government	Unknown or (Unknown)	Unknown or (Unknown)	Unknown or (Unknown)

FISCAL ANALYSIS

ASSUMPTION

§ 217.345 - offenders under 18:

In response to a similar proposal from this year (SB 338), officials from the **Department of Corrections (DOC)** stated on June 20, 2012, the Department of Justice published the final federal standard on the Prison Rape Elimination Act (PREA) and it took effect August 20, 2012. DOC has one year from the effective date to come into full compliance with the revised PREA standards. Section 115.14 requires DOC to provide sight and sound segregation for youthful offenders under 18 years of age (17 and under). Missouri currently provides such segregation for offenders under 17 years of age (16 and under).

Passage of HB 635 would provide for operational efficiencies for the DOC in that all offenders under 18 could be housed together and sight and sound segregated from adult offenders age 18 and over. The DOC considers that housing the under 17 year olds with the 17 year olds does not impact the safety of the under 17 year olds. In fact, the research done for the Adult Internal Classification System (AICS) review supports integrating the two groups of young offenders.

If this bill were not to pass, the DOC would be required by current MO statute to maintain segregation for 3 groups as opposed to 2:

- 1) offenders under 17 years of age (16 and under,)
- 2) offenders 17 years of age, and
- 3) offenders 18 years of age and older.

Combining all youthful offenders, yet keeping them separate from the adult offender population, makes sense fiscally and programmatically and also provides compliance with the new PREA standard with no added fiscal impact to the DOC.

§§ 544.455 & 557.011 - electronic criminal monitoring:

Oversight assumes this part of the proposal permits a person who is placed on house arrest with electronic monitoring to pay the costs of monitoring themselves or if the person on house arrest is unable to pay the costs of monitoring themselves have those costs paid by the county commission. The county commission must agree to pay the costs of electronic monitoring from the general revenue of the county.

ASSUMPTION (continued)

Oversight assumes the proposal is permissive and some county commissions will elect to pay the cost of electronic monitoring and other county commissions will choose not to pay for the costs of monitoring. **Oversight** will show \$0 or an unknown cost to county commissions dependant on the number of defendants released on electronic monitoring that cannot pay the cost of monitoring.

§§ 559.100, 559.105 & 570.120 - restitutions paid:

Oversight will assume the proceeds (from \$25 to \$75 per case) collected into the local Administrative Handling Cost Fund would be used in the same year by prosecuting attorneys and circuit attorneys.

§§ 566.030 to 566.101 - Sexual offenses:

Officials from the **Department of Social Services (DSS)** state sections 566.030 to 566.101 of the proposal renames and redefines several crimes dealing with sexual assault.

Old Name	New Name
Forcible Rape	Rape in the First Degree
Sexual Assault	Rape in the Second Degree
Forcible Sodomy	Sodomy in the First Degree
Deviate Sexual Assault	Sodomy in the Second Degree
Sexual Abuse	Sexual Abuse in the First Degree
Sexual Abuse in the First Degree	Sexual Abuse in the Second Degree
Sexual Misconduct in the First Degree	Sexual Abuse in the Second Degree
Sexual Misconduct in the Second Degree	Sexual Misconduct in the First Degree
Sexual Misconduct in the Third Degree	Sexual Misconduct in the Second Degree

The penalties for each crime remain basically the same. The rest of the bill consists of the necessary statutory revisions to bring related statutory sections into alignment with the new nomenclature.

There is no fiscal impact to the Department of Social Services. Although the names of the offenses are different, there is no change to DSS's responsibilities. For instance, it would still be the Division of Youth Services' (DYS) responsibility under Section 160.261 to report acts of school violence in DYS facilities to the appropriate law enforcement agency. The same is true of Section 211.447, which allows the court to terminate the parental rights of the biological father when the child was conceived as a result of forcible (now first degree) rape.

ASSUMPTION (continued)

In response to a similar proposal from this year (HB 280), officials from the **DOC** stated passage of this proposal would result in certain sex offenders sentenced to DOC for longer incarceration periods and for serving sentences consecutively instead of concurrently. These years of incarceration would be served in addition to their current sentence and fiscal impact would occur after the scope of this fiscal note.

If persons are sentenced to the custody of the DOC for longer terms due to the provisions of this legislation, the DOC will incur a corresponding increase in direct offender cost through incarceration (FY12 average of \$17.059 per offender, per day, or an annual cost of \$6,227 per inmate).

In summary, supervision by the DOC through incarceration would result in additional costs to the department and the exact fiscal impact is unknown, but it will be past the scope of this fiscal note.

§§ 600.011 - 600.064 Private counsel representing indigent accused;

Officials from the **Office of the State Courts Administrator (CTS)** assume Sections 600.011 - 600.042 may have some, unquantifiable at this time, impact. Any significant changes in workload will be reflected in future budget requests.

Officials at the **Office of the State Public Defender (SPD)** assume it is the risk of jail time that is the constitutional trigger requiring the appointment of counsel to the indigent accused. This proposal has the potential to reduce the number of cases requiring public defender services. The extent of that reduction will depend upon how the Prosecuting Attorneys and Judges utilize the new statutes.

Requiring the Prosecuting Attorney to indicate at the beginning of a misdemeanor case whether he intends to seek jail time could eliminate a number of public defender cases that usually wind up without receiving jail time.

Currently by statute, public defenders are required to handle all Probation Revocation cases. This proposal changes this by requiring public defenders in cases only when a judge determines that the appointment of counsel is necessary to protect the person's due process rights under section 217.720 or section 559.036. The number of Probation Violation cases will undoubtedly be reduced. However, the extent of that reduction cannot be determined at this time.

ASSUMPTION (continued)

Because of the overload the Public Defender System is operating under, it is not anticipated that the pending legislation would reduce current staffing but it could reduce the number of attorneys required to bring the caseloads of the Missouri State Public Defender System to the American Bar Association standards.

Based on SPD's response, **Oversight** will assume the proposal would not result in a significant budget savings to the SPD. Oversight assumes any savings that may be realized would be offset by the cost of appointment of private counsel. Therefore, Oversight will not reflect a savings to SPD in the fiscal note.

Bill as a Whole

Officials at the **Joint Committee on Administrative Rules, Missouri Highway Patrol** and the **Office of the State Auditor** each assume there is no fiscal impact from this proposal.

Officials at the **Department of Mental Health** assume none of the changes to current law significantly change the duties of the department; therefore this proposal has no fiscal impact on the department.

Officials at the **Office of Attorney General (AGO)** assume that any potential costs arising from this proposal can be absorbed with existing resources. AGO may seek additional appropriation if the proposal results in a significant increase in litigation.

Officials at the **Department of Elementary and Secondary Education** assume there is no state cost to the foundation formula associated with this proposal. Should the new crimes and amendments to current law result in additional fines or penalties, DESE cannot know how much additional money might be collected by local governments or the DOR to distribute to schools. To the extent fine revenues exceed 2004-2005 collections, any increase in this money distributed to schools increases the deduction in the foundation formula the following year. Therefore the affected districts will see an equal decrease in the amount of funding received through the formula the following year; unless the affected districts are hold-harmless, in which case the districts will not see a decrease in the amount of funding received through the formula (any increase in fine money distributed to the hold-harmless districts will simply be additional money). An increase in the deduction (all other factors remaining constant) reduces the cost to the state of funding the formula.

ASSUMPTION (continued)

Officials from the **Department of Corrections (DOC)** state currently, they cannot predict the number of new or extended commitments which may result from the creation and enhancement of the bill components outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in direct offender cost either through incarceration (FY11 average of \$16.878 per offender, per day, or an annual cost of \$6,160 per inmate) or through supervision provided by the Board of Probation and Parole (FY11 average of \$5.12 per offender, per day or an annual cost of \$1,869 per offender).

In summary, passage of this bill has the potential for costs to the department and the exact fiscal impact is unknown for the DOC per each year.

<u>FISCAL IMPACT - State Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
GENERAL REVENUE			
<u>Costs - Department of Corrections</u>			
Potential additional costs of in incarceration/supervision	(Unknown - could exceed <u>\$100,000</u>)	(Unknown - could exceed <u>\$100,000</u>)	(Unknown - could exceed <u>\$100,000</u>)
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	(Unknown - could exceed <u>\$100,000</u>)	(Unknown - could exceed <u>\$100,000</u>)	(Unknown - could exceed <u>\$100,000</u>)

<u>FISCAL IMPACT - Local Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
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LOCAL POLITICAL SUBDIVISIONS

<u>Income</u> - Administrative Handling Costs - Maximum of \$75 per restitution §559.100	Unknown	Unknown	Unknown
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<u>Costs</u> - prosecuting attorney or circuit attorney costs to implement provision of the bill in collecting restitution.	(Unknown)	(Unknown)	(Unknown)
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<u>Cost</u> - County Commissions § 544.455 and 557.011 - Electronic Monitoring	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
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ESTIMATED NET EFFECT TO LOCAL POLITICAL SUBDIVISIONS	<u>Unknown or (Unknown)</u>	<u>Unknown or (Unknown)</u>	<u>Unknown or (Unknown)</u>
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FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This bill modifies provision relating to criminal procedures.

Section 600.062 has an emergency clause.

This legislation would not duplicate any other program and would not require additional capital improvements or rental space. Part of the proposal is federally mandated (Section 217.345).

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SOURCES OF INFORMATION

Office of the State Courts Administrator

Office of Prosecution Services

Office of the State Public Defender

Department of Corrections

Joint Committee on Administrative Rules

Office of the State Auditor


Department of Elementary and Secondary Education

Office of Attorney General

Missouri Highway Patrol

Department of Mental Health

Department of Social Services



Ross Strobe
Acting Director
June 6, 2013

RS:LR:OD